



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,065	07/21/2003	Eric Lee Gaylord	8864.16	5160
21176	7590	10/19/2005		
SUMMA & ALLAN, P.A. 11610 NORTH COMMUNITY HOUSE ROAD SUITE 200 CHARLOTTE, NC 28277			EXAMINER WIEKER, AMANDA FLYNN	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,065

Applicant(s)

GAYLORD ET AL.

Examiner

Amanda F. Wieker

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 and 24-36 is/are allowed.
- 6) ☒ Claim(s) 10, 12, 13, 16-20, 23, 37-41 and 44-49 is/are rejected.
- 7) ☒ Claim(s) 11, 14-15, 21-22 and 42-43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/21/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 21 July 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language (specifically, FR 2,606,998). It has been placed in the application file, but the information contained in FR 2,606,998 has not been considered.

Claim Objections

2. Claims 38 and 45 are objected to because of the following informalities:

In claim 38, in line 3, there is insufficient antecedent basis for “the brace and buttress”.

In claim 45, in the last two lines, there is insufficient antecedent basis for “the buttress”.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10, 12, 13, 16-20, 23, 37-41 and 44-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,759,167 to Shields, Jr. et al.

Shields, Jr. et al. disclose an apparatus for stabilizing a joint comprising:

a base (10) defining an opening (at 20) for a portion of a joint;

a buttress (30) covering a portion of said opening, said buttress secured to said base adjacent said opening and proximate the joint for applying a first force to the portion of the joint in the opening (buttress applies force); and

a tensioning member (60) covering said buttress and portions of said opening, said tensioning member secured to said base adjacent said buttress and proximate the joint for applying a second force to against the joint in addition to the first force applied by the buttress (tightening tension member applies force).

Portions of said base are foldable against and removably fixed to one another to define a sleeve that wraps around the joint (via 21).

The buttress is arcuate and positioned concave with respect to the joint (see Figures 5).

The first force applied by said buttress and the second force applied by said tensioning member can be co-directional and cumulative. The first force applied by said buttress and the second force applied by said tensioning member can be medial forces or lateral forces, per the orientation of the brace and buttress.

Said joint is a knee and said buttress and said tensioning member stabilize patellar movement.

The base and said tensioning member are formed from an elastomeric material (neoprene).

The base includes at least one elongate compression member (17,18) extending laterally from the portion of the base to which the tensioning member is secured.

The device disclosed by Shields, Jr. et al. anticipates the claimed method for stabilizing movement of the patella comprising the steps of:

positioning the support brace having an opening against the knee;

extending a portion (30) of the brace against the knee to apply a first force against portions of the knee the opening; and

extending another portion (60) of the brace against the knee apply a second force against the knee.

The method further comprises securing the brace to prevent movement of the brace and buttress relative to the knee when the first and second forces are applied against the knee, the step of securing performed after the step of positioning the brace and before the step of extending a portion the brace against the knee to apply a first force.

The step of positioning comprises: wrapping the brace around the knee such that the opening receives the patella; and removably fixing portions of the brace (21) to one another to form a sleeve around the knee for applying a compressive force against portions of the knee surrounded by the brace.

The step of removably fixing comprises applying the compressive force about the superior and inferior portions of the knee.

The first step of extending comprises selectively applying the first force to adjust the desired tension on the knee.

The second step of extending comprises selectively applying the second force to adjust the desired tension on the knee, and further comprises extending a flexible sheet (60) having one portion secured (62) to the brace across at least a portion of the opening and removably attaching another portion (65,66) of the sheet to the brace such that the sheet overlies the buttress and a portion of the opening, and extends against the patella.

The first force and the second forces applied can be co-directional and cumulative, and can be medial forces or lateral forces, per the orientation of the brace and buttress.

Art Unit: 3743

5. Claims 37-41 and 44-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,865,776 to Springs.

The device disclosed by Springs anticipates the claimed method for stabilizing movement of the patella comprising the steps of:

positioning the support brace (10) having an opening (42) against the knee;

extending a portion (52) of the brace against the knee to apply a first force against portions of the knee the opening; and

extending another portion (64) of the brace against the knee apply a second force against the knee.

The method further comprises securing the brace (via 26) to prevent movement of the brace and buttress relative to the knee when the first and second forces are applied against the knee, wherein the step of securing can be performed after the step of positioning the brace and before the step of extending a portion the brace against the knee to apply a first force.

The step of positioning comprises: wrapping the brace around the knee such that the opening receives the patella; and removably fixing portions of the brace (36) to one another to form a sleeve around the knee for applying a compressive force against portions of the knee surrounded by the brace.

The step of removably fixing comprises applying the compressive force about the superior and inferior portions of the knee.

The first step of extending comprises selectively applying the first force to adjust the desired tension on the knee.

The second step of extending comprises selectively applying the second force to adjust the desired tension on the knee, and further comprises extending a flexible sheet (64) having

one portion secured to the brace across at least a portion of the opening and removably attaching another portion (ends with fasteners) of the sheet to the brace such that the sheet overlies the buttress and a portion of the opening, and extends against the patella.

The first force and the second forces applied can be co-directional and cumulative, and can be medial forces or lateral forces, per the orientation of the brace and buttress.

6. Claims 37, 41 and 44-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Number 2004/0153017 to Simmons et al.

The device disclosed by Simmons et al. anticipates the claimed method for stabilizing movement of the patella comprising the steps of:

- positioning the support brace (10) having an opening (22) against the knee;
- extending a portion (38) of the brace against the knee to apply a first force against portions of the knee the opening; and
- extending another portion (14) of the brace against the knee apply a second force against the knee.

The first step of extending comprises selectively applying the first force to adjust the desired tension on the knee.

The second step of extending comprises selectively applying the second force to adjust the desired tension on the knee, and further comprises extending a flexible sheet (14) having one portion secured to the brace across at least a portion of the opening and removably attaching another portion (74) of the sheet to the brace such that the sheet overlies the buttress and a portion of the opening, and extends against the patella.

The first force and the second forces applied can be co-directional and cumulative, and can be medial forces or lateral forces, per the orientation of the brace and buttress.

Allowable Subject Matter

7. Claims 1-9 and 24-36 are allowed.
8. Claims 11, 14-15, 21-22 and 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

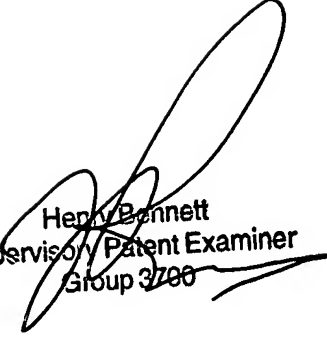
Amanda F. Wieker
Examiner
Art Unit 3743

Application/Control Number: 10/624,065

Page 8

Art Unit: 3743

afw
afw


Henry Bennett
Supervisory Patent Examiner
Group 3700